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No. 233

In the Supreme Court of the United States

OCTOBER TERM, 1960

BERNHARD DEUTCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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CITATIONS

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OPINIONS BELOW

The opinion of the district court (R. 30–34) is reported at 147 F. Supp. 89. The opinion of the court of appeals (R. 330–339) is reported at 280 F. 2d 691.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 1960 (R. 340). The petition for a writ of certiorari was filed on July 13, 1960, and granted on October 10, 1960 (R. 341; 364 U.S. 812). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner raised the question of pertinency at the time he was questioned by the subcommittee.

2. Whether, if pertinency was properly raised, the questions asked petitioner were pertinent to the subject under inquiry by the subcommittee and whether petitioner was made aware of that pertinency.

3. Whether the subcommittee's inquiry had a proper legislative purpose.

4. Whether petitioner's rights under the First Amendment were violated.

STATUTE AND RULE INVOLVED

2 U.S.C. 192 (R.S. 102, as amended) and the pertinent portions of Rule XI of the Rules of the House of Representatives are set forth in petitioner's brief on pages 3–4.

STATEMENT

Petitioner was charged in a five-count indictment with having refused to answer five questions asked of him by a subcommittee of the Committee on Un-American Activities of the House of Representatives. Petitioner, having waived trial by jury, was found guilty on four counts (One, Two, Four, and Five) (R. 27–28), and was sentenced to serve ninety days and to pay a fine of one hundred dollars (R. 28–29).

Briefly summarized, the evidence at the trial was as follows:

In February 1953, the House Committee on Un-American Activities began a series of hearings on

Communist infiltration into the field of education.[1] From July 13 to 16, 1953, a subcommittee of the full Committee conducted a "general investigation of Communist Party activities" (R. 19) in the Albany, New York area. *Hearings Before the House Committee on Un-American Activities; Investigation of Communist Activities in the Albany, N.Y. Area,* 83d Cong., 1st Sess.,[2] Parts 1, 2 (Govt. Ex. 1; R. 35). The subcommittee then postponed further hearings in Albany (R. 16–17), until resuming them on April 7–9, 1954 (*Hearings,* Parts 3–6). During the course of the Albany hearings, the subcommittee heard testimony from witnesses showing that, during the period from 1947 to 1953, a Communist cell was active on the Cornell University campus, located in Ithaca, New York, a relatively short distance from Albany, and that students enrolled in the Cornell School of Industrial and Labor Relations were accepting positions with Communist-controlled labor unions.[3] As a result, the subcommittee, in April 1954, was desirous of "ascertaining to what extent any of those students leaving on those summer courses were influenced to select Communist-controlled unions for the purposes of their summer work" (R. 23).

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[1] See "Opening Statement of the Chairman, February 25, 1953," reproduced in full as the Appendix to the court of appeals' opinion in *Barenblatt* v. *United States*, 240 F. 2d 875, 884–885 (C.A. D.C.), reversed, 354 U.S. 930, and quoted in the opinion of this Court, 360 U.S. at 131, note 31.

[2] Hereafter referred to as "*Hearings.*"

[3] See, *e.g.*, the testimony of John E. Marqusee (*Hearings*, Part 3, pp. 4333–4353; Govt. Ex. 3) and the testimony of the Committee's counsel at petitioner's trial relating to information received by the Committee in executive session from Homer Owen (R. 22–24).

On April 8, 1954, E. Ross Richardson * appeared before the subcommittee at Albany and testified in part as follows (R. 286–287):

Mr. TAVENNER. Were you aware of the existence of a Communist Party group within the faculty at Cornell?

Mr. RICHARDSON. Not as a group. I was only aware of one faculty member who was a Communist Party member, and I did not know who he was.

Mr. TAVENNER. You were never successful in learning his name?

Mr. RICHARDSON. That's correct.

Mr. TAVENNER. How is it that you can testify that there was a person on the faculty who was a member of the Communist Party if you have never learned of his name?

Mr. RICHARDSON. I had one man who was to contact this person, and any information coming from the city committee or from the Communist Party was carried to him through this one person, and anything he had to send back to the Communist Party came back through this one person.

Mr. SCHERER. What was that one person's name?

Mr. RICHARDSON. Bernie Deutch.

Mr. SCHERER. Spell it.

Mr. RICHARDSON. D-e-u-t-c-h.

---

* Richardson, who attended Cornell Law School from 1950 to 1953, was first approached by the Communist Party on that campus. After reporting that fact to the F.B.I., Richardson accepted an invitation to join the Party, and was assigned to the Labor Youth League. He thereafter continued to report to the F.B.I. (*Hearings*, Part 4, pp. 4356-4357; Govt. Ex. 4).

Mr. TAVENNER. He was a member of the graduate school group of the party?

Mr. RICHARDSON. That's correct.

Mr. SCHERER. Again for the record, What year was it that Bernie Deutch acted as a contact man with the professor?

Mr. RICHARDSON. I know from the early part of 1952 until the Communist Party re-registration, around March of 1953.

Mr. TAVENNER. Were any contributions made to the general work of the party by the unknown individual on the faculty?

Mr. RICHARDSON. At one time one hundred and some dollars was turned over to me from a mysterious source, and I suspected it came from that member.

Mr. SCHERER. You don't know?

Mr. RICHARDSON. I don't know.

Mr. SCHERER. You say "a mysterious source." Was it this Bernie Deutch?

Mr. RICHARDSON. It came through Bernie Deutch.

Mr. SCHERER. Did Bernie Deutch tell you where it was from?

Mr. RICHARDSON. No. He said it came from someone else other than himself.

The petitioner, then a graduate student at the University of Pennsylvania, was subpoenaed to appear before the subcommittee in Albany on April 9, 1954, but was granted a continuance at his request (R. 18). Accompanied by counsel, he appeared in Washington on April 12, 1954 (R. 13, 292). At the outset of petitioner's testimony, counsel for the Committee made the following introductory statement (R. 293):

> Mr. Deutch, during hearings at Albany last week, the committee heard testimony regarding the existence of a Communist Party group or cell operating among undergraduates at Cornell University, among certain graduates at Cornell and in the city of Ithaca.
>
> In connection with that testimony, the committee was informed that you were a member of one or more of those groups. If so, I would like to ask you certain matters relating to your activity there.

Petitioner, in response to questioning, told the subcommittee that he attended Cornell University as an undergraduate and graduate student from 1947 to 1953 (R. 293); that, during this period, he was a member of the Communist Party (R. 293–294, 302–303); and that, while in the Party, he worked with Emmanuel Ross Richardson (R. 299–300). Petitioner, who indicated some familiarity with Richardson's testimony (R. 295), was told by the subcommittee what Richardson had testified concerning him (R. 294, 296).

Petitioner refused to answer a question seeking the name of the faculty member for whom he had acted as liaison with the Party leadership (Count One), solely on the ground that it was against his "moral scruples" to answer questions about other people (R. 294). This reason was rejected by the subcommittee as not constituting legal justification, and he was ordered to answer the question (R. 294–295). When petitioner again refused to answer, he was informed that under the terms of the statute authorizing its establishment the Committee was

charged with investigating the extent of the Communist Party's activities including "the existence of the Communist cell" at Cornell (R. 295–296). Petitioner was then asked for the name of the anonymous donor to the Party who had given him the $100 (Count Two) (R. 296). He refused to answer the question on the ground that "I gave you the reason why I decline to answer regarding names, and this was from a personal friend" (R. 296). He admitted, however, knowing the donor's name (R. 298). When asked whether he was acquainted with Homer Owen [5] (Count Four), petitioner stated only that "I don't think I should discuss any people from now on * * * *" (R. 300). In response to a question as to the name of the student who had solicited his membership in the Party (Count Five), he answered "I don't wish to give his name" (R. 303). No other reason for petitioner's refusals to answer was ever given.[6]

Petitioner appealed his conviction to the Court of Appeals for the District of Columbia Circuit. On May 7, 1958, the Court of Appeals ordered that hearings in this and seven other pending contempt of Congress cases—all of which involved refusals to answer questions asked by congressional committees—"be deferred until after the decision of the Supreme Court

[5] Homer Owen, a student of industrial relations at Cornell from 1947 or 1948 until 1952, had informed the subcommittee concerning the influencing of students to work with selected Communist-controlled unions for their summer work (R. 22–23).

[6] It was stipulated at the trial that the Committee reported petitioner's contumacy to the House of Representatives, and the House certified the Committee's report to the United States Attorney for prosecution (R. 12).

in *Barenblatt* v. *United States* * * *." Following the *Barenblatt* decision (360 U.S. 109) on June 8, 1959, the eight cases were assigned to a single panel of the court below. Supplemental briefs were ordered filed in each case and oral arguments were heard. On June 18, 1960, the court of appeals reversed the convictions in two[7] of the eight cases, and unanimously affirmed the convictions in the other six,[8] including that of petitioner.

SUMMARY OF ARGUMENT

All of petitioner's contentions were fully considered in *Barenblatt* v. *United States*, 360 U.S. 109. That decision is controlling here.

I

A. A series of decisions by this Court has established that a witness charged with contempt cannot raise at his trial issues which he did not raise before the tribunal before which the contempt occurred—at least when the tribunal might have been able to remedy the witness' objection. A congressional committee can remedy a pertinency objection by fully explaining the pertinency of the question to the subject under inquiry or even by changing the subject under

[7] *Knowles* v. *United States*, 280 F. 2d 696; *Watson* v. *United States*, 280 F. 2d 689. The government did not seek review in those cases.

[8] *Deutch* v. *United States*, 280 F. 2d 691; *Gojack* v. *United States*, 280 F. 2d 678; *Russell* v. *United States*, 280 F. 2d 688; *Shelton* v. *United States*, 280 F. 2d 701; *Liveright* v. *United States*, 280 F. 2d 708; *Price* v. *United States*, 280 F. 2d 715. Petitions for certiorari have been filed in all these cases and are awaiting disposition by the Court.

inquiry, if necessary. Moreover, *Watkins* v. *United States*, 354 U.S. 178, and *Barenblatt, supra*, establish that a witness cannot raise the issue of pertinency for the first time at his trial. Here, petitioner based his refusal to answer entirely on grounds of the jurisdiction of the subcommittee and moral scruples, and there was not even a suggestion of an objection to pertinency.

B. In any event, the pertinency of the question asked petitioner is clear and this pertinency was made to appear with indisputable clarity to petitioner.

The subject under inquiry when petitioner was questioned was Communist activity in the fields of labor and education, particularly in the Albany, New York area, and even more specifically Communist activity at Cornell University. The questions asked petitioner as to the Cornell faculty member for whom petitioner had acted as liaison with the Party leadership, the name of an anonymous donor to the Party who had given petitioner $100 while he was at Cornell, and the name of the student who had solicited his membership in the Party, were pertinent on their face to the inquiry into Communist activity at Cornell.

Petitioner suggests that these questions were not pertinent because they concerned the names of other persons engaged in Party activities. But the disclosure of such names was pertinent, and indeed essential, for at least two legitimate purposes: first, to obtain information concerning the number and importance of persons engaged in these Communist activities; and second, to discover new witnesses who

had information concerning Communist activity, not known to the witness before the Committee. Moreover, the pertinency of questions seeking to identify persons involved in Communist activity has been specifically recognized by the lower federal courts, as well as this Court. See *McPhaul* v. *United States*, 364 U.S. 372, 381.

The record shows conclusively that petitioner was adequately apprised of the pertinency of the questions at the subcommittee hearings. Immediately prior to his testimony, counsel for the Committee specifically informed him that the subject under inquiry was Communist activity of Cornell University. The questions described above were clearly relevant to this subject, especially to a well-educated man who had the advice of counsel. Cf. *Barenblatt, supra*, 360 U.S. at 124–125.

II

A. Petitioner has no standing to claim the protection of the First Amendment.

1. First, he failed to raise this objection at the time he refused to answer the questions before the subcommittee. The only faint suggestion of a possible First Amendment claim was the statement, with regard to a different question, that he was answering "under protest as to its constitutionality." But in order for an objection to be raised at trial, it must be specific, rather than "buried * * * in the context of [a] general challenge to the power of the Subcommittee" (*Barenblatt, supra*, 360 U.S. at 124).

2. Petitioner has no standing to claim the First Amendment rights of other members. He admitted that he was a member of the Communist Party. The questions which he refused to answer involved the Party activities of others.

This Court has held in numerous cases that a litigant cannot invoke the constitutional rights of others. The only exception is when the litigant can be said to represent the persons whose constitutional rights were allegedly violated. Thus, an association can invoke the rights of its members. See *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449. In contrast, here petitioner's only connection with the unnamed other persons is at most friendship and common membership, in the past, in the Communist Party.

B. The subcommittee was acting pursuant to a valid legislative purpose. The Court held in *Barenblatt* that the Communist Party is not an ordinary political party and that therefore Congress has broad power to legislate as to its activities (360 U.S. at 128). More particularly, *Barenblatt* held that Congress has the power to investigate Communist activities in the field of education. The fact that the questions petitioner refused to answer related to the names of other persons does not detract from the validity of the legislative purpose. As stated above (pp. 9–10), such information was both pertinent and extremely useful to a valid legislative investigation.

C. The balance of individual and governmental interests supports the subcommittee's inquiry. The governmental interests were at least as strong as in

Barenblatt. As in the latter case, the subcommittee was investigating Communist activity in the field of education. Because of the clear connection between the Communist Party and violent overthrow of government, this Court has recognized the strong public interest in this area. The subcommittee had ample basis to believe petitioner had information which would be useful, since another witness had identified petitioner as a Party member and he himself had admitted this fact before the disputed questions were asked. Moreover, petitioner's individual interest in asserting the First Amendment rights of other persons, if he had standing to assert these rights at all, was substantially less than the interest Barenblatt had in claiming his own rights. At the most, petitioner, in claiming the rights of others, stood in the same position as if those persons were claiming their rights for themselves—that is, the same position as Barenblatt was in.

ARGUMENT

Petitioner attacks his conviction on four grounds. First, he suggests that the questions were not pertinent, as a matter of law, to the subject under inquiry. Second, he asserts that the pertinency of the questions to the subject under inquiry was not made sufficiently clear to him at the time he refused to answer. Third, he states that the subcommittee's questions did not have a valid legislative purpose. Fourth, he claims that the questions violated rights under the First Amendment. In our view, all of these

issues were decided, in substantially the same circumstances, by this Court in *Barenblatt* v. *United States,* 360 U.S. 109. There, the Court held that a witness must raise the issues of pertinency at the time he refuses to answer the questions of a congressional committee and that, in any event, the record showed that the witness knew of the pertinency of the questions asked (*id.* at 123–125); that the investigation of Communist activity in an educational institution had a valid legislative purpose (*id.* at 127–133); and that "the balance between the individual and governmental interests here at stake must be struck in favor of the latter" and therefore the First Amendment was not violated (*id.* at 134).

Petitioner raises these same issues again, but attempts to distinguish *Barenblatt* principally on the ground that the subcommittee here inquired about the Communist activities of other persons than the witness himself. It is true that the Court did not find it necessary to consider in *Barenblatt* the question asked the witness concerning another person (whether he knew Francis Crowley or knew Crowley as a member of the Communist Party). 360 U.S. at 114–115. But, as we will show, such a question is not materially different, either constitutionally or otherwise, from questions concerning the Communist activities of the witness himself which were upheld in *Barenblatt.* We submit therefore that this Court's decision in *Barenblatt* fully answers petitioner's contentions, and is controlling here.

I. PETITIONER, HAVING FAILED TO CHALLENGE THE PERTINENCY OF THE QUESTIONS, CANNOT RAISE THE ISSUE FOR THE FIRST TIME AT HIS TRIAL. IN ANY EVENT, THE QUESTIONS WERE PERTINENT TO THE SUBJECT UNDER INQUIRY AND THIS WAS MADE CLEAR TO PETITIONER

A. THE ISSUE OF PERTINENCY WAS NOT PROPERLY RAISED BEFORE THE SUBCOMMITTEE

Petitioner contends (Pet. Br. 16–28) that the questions which he refused to answer were not pertinent to the subject under inquiry and that, in any event, their pertinency was not made indisputably clear to him. But petitioner failed to raise this objection before the subcommittee and, under this Court's decisions, is precluded from raising it for the first time in the contempt proceeding.

1. In *Hale* v. *Henkel,* 201 U.S. 43, the witness based his refusal to produce documents on three grounds, one of which being that it was "impossible for him to collect them within the time allowed" (*id.* at 70). The Court indicated that it would not consider this objection because, "[h]ad the witness relied solely upon [this] ground, doubtless the court would have given him the necessary time" (*ibid.*). *United States* v. *Bryan,* 339 U.S. 323, 334, in commenting on the *Hale* case, stated:

> [H]aving refused compliance for other reasons which the lower court could not remedy, the witness could not later complain of its refusal to do a meaningless act—to grant him additional time to gather papers which he had indicated he would not produce in any event.

Similarly, *Bryan* held that a witness who, having been subpoenaed to appear and produce records before a congressional committee, appears but refuses to produce the records, may not raise at his trial for the first time the issue whether a quorum of the committee was present. The Court stated that "[t]he defect in composition of the Committee, if any, was one which could easily have been remedied. * * * For two years, now grown to four, the Committee's investigation was obstructed by an objection which, so far as we are informed, could have been rectified in a few minutes" (339 U.S. at 333). Moreover, it was apparent that this witness "would not have complied with the subpoenas no matter how the Committee had been constituted at the time. * * * Here respondent would have the Committee go through the empty formality of summoning a quorum of its members to gather in solemn conclave to hear her refuse to honor its demands" (*id.* at 333–334). And in *United States* v. *Fleischman,* 339 U.S. 349, 352, the Court, relying on *Bryan,* stated simply that the issue of a quorum "was raised for the first time at the trial, two years after [the witness'] appearance before the Committee, where she had given other reasons for her failure to produce the documents," and therefore "the defense of lack of quorum was not available to her."

The principles originally laid down by the Court in the *Hale, Bryan,* and *Fleischman* cases are fully applicable as to the issue of pertinency in the present case. When a witness challenges the pertinency of a question, the congressional committee or its counsel

can explain more fully the relationship between the question and the subject under inquiry. Indeed, the committee can even change the subject under inquiry if that is necessary to make the question pertinent. Moreover, when a witness relies on other grounds for refusing to answer the question, the pertinency of the question, like the existence of a quorum, is immaterial since the witness would not have answered no matter how clear the committee made the pertinency of the question appear.

Watkins v. *United States*, 354 U.S. 178, considered the issue of the pertinency of the question to the subject under inquiry by the committee. There, the Court stated that "[t]he final source of evidence as to the 'question under inquiry' is the Chairman's response *when petitioner objected to the questions on the grounds of lack of pertinency*" (354 U.S. at 214; emphasis added). The Court then held that "[u]nless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, *upon objection of the witness on grounds of pertinency*,[9] to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto" (*id.* at 214–215; emphasis added). The footnote to this sentence reads "Cf. *United States* v. *Kamin*, 136 F. Supp. 791, 800" (354 U.S. at 215, note 55). At page 800 of the *Kamin* opinion, then District Judge Aldrich emphasized the necessity of a specific objection on grounds of pertinency:

> The defendant contends that it is not enough for a question to be pertinent—the witness must

[9] Petitioner suggests (Pet. Br. 24) that his statement was comparable to Watkins'. But Watkins specifically told the

> be informed of the subject matter, so that he may have a definite standard by which to determine whether he should answer. Because if he was not so informed he admittedly indicated no interest, and did not choose to supplement any deficiency in his knowledge by asking either the Chairman or his own counsel, I regard this contention as immaterial.

The requirement that the issue of pertinency be raised before the investigating committee was made absolutely clear by the holding in *Barenblatt* v. *United States, supra,* 360 U.S. at 123–124. Indeed, the Court stated that the issue is not even raised by a memorandum submitted to the committee by a witness saying that "I might wish to . . . challenge the pertinency of the question to the investigation" and quoting, from an opinion of this Court, "language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency. These statements cannot, however, be accepted as the equivalent of a pertinency objection. At best, they constituted but a contemplated objection to questions still unasked, and buried as they were in the context of petitioner's general challenge to the power of the Subcommittee they can hardly be considered adequate, within the meaning of what was said in *Watkins* * * * to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" (*id.* at 123–124). See also *McPhaul* v. *United States,* 364 U.S. 372, 380–381.

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committee that "I do not believe that such questions are relevant to the work of this committee * * *" (See Pet. Br. 24).

2. Petitioner in the instant case, who appeared before the subcommittee with counsel, did not make even the anticipatory and buried objection to pertinency made by the witness in *Barenblatt* in refusing to answer whether he was a member of the Communist Party. Petitioner made his first objection to answering any of the subcommittee's questions when he was asked whether he had been a member of a group of the Communist Party at Cornell. He stated, after conferring with counsel (R. 293–294):

> Mr. DEUTCH. I will answer that question, but only under protest.
>
> I wish to register a challenge as to the jurisdiction of this committee under Public Law 601, which is the committee's enabling legislation. This question, or any similar questions involving my associations, past or future, I am answering, but only under protest as to its constitutionality. But, under your jurisdiction as stated, I answer yes, I was a member of the Communist Party.

On being asked to identify the faculty member at Cornell, the question in Count One, petitioner answered, again after conferring with counsel (R. 294):

> Mr. DEUTCH. Sir, I am perfectly willing to tell you about my own activities, but do you feel I should trade my moral scruples by informing on someone else?

At this point, petitioner was told by Acting Chairman Jackson that moral scruples do not constitute a legal reason for declining to answer the question, and he was directed to answer (R. 294). He answered that "the whole question has been magnified more than it

should have. * * * I do not believe I can answer questions about other people, but only about myself." (R. 294.) After a further colloquy, he stated (R. 296):

> Mr. DEUTCH. * * * The only thing I am saying sir, my challenge is, is it constitutional under Public Law 601.[10]

Upon being asked to name the anonymous donor of the $100 (Count Two), petitioner stated (R. 296):

> Mr. DEUTCH. No; this contribution was made—I believe I gave you the reason why I decline to answer regarding names * * *.

Representative Jackson's response to this was again to advise petitioner that a desire to protect friends and acquaintances was not a legal reason for declining to answer the question (R. 296). Petitioner objected to the questions set forth in Counts Four and Five, again after conferring with counsel, on the ground that he did not wish to give other people's names (R. 300–303).

The record of the hearings makes clear that petitioner never suggested that he did not understand the subject under inquiry or how the questions related to this subject. As the court of appeals held, Deutch (R. 338–339):

> declined to answer the questions, not on the ground of pertinency or on any other ground except that it was against his "moral scruples" to answer questions about other people. Nor did he claim that he did not understand how

[10] P.L. 601, 79th Cong., 2d Sess., was the authorizing resolution for the Committee (see R. 35–36).

> the questions related to the subject under inquiry, or what that subject was. * * *
>
> * * * It would require real stretching of the imagination to read into the statement made by Deutch an objection to pertinency—or anything that would in the slightest degree indicate that he was unaware of the subject under inquiry.

B. THE QUESTIONS WHICH PETITIONER REFUSED TO ANSWER WERE PERTINENT TO THE SUBJECT UNDER INQUIRY AND THIS PERTINENCY WAS MADE TO APPEAR WITH INDISPUTABLE CLARITY TO PETITIONER

As we have just shown, the decisions of this Court establish that a witness cannot raise the issue of pertinency for the first time at his contempt trial. In any event, however, here as in *Barenblatt* (360 U.S. at 124–125), petitioner had been fully apprised of the pertinency of the questions at the time he refused to answer them.

In *Watkins* v. *United States, supra,* 354 U.S. at 214–215, the Court held:

> Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. To be meaningful, the explanation must describe what the topic under inquiry is and the connective reasoning whereby the precise questions relate to it.

Among the sources of such an explanation, the Court noted the resolution authorizing the subcommittee hearings, the opening statement of the Chairman at

the hearings, the testimony of previous and subsequent witnesses, and the response of the subcommittee when the witness refused to answer the questions on grounds of lack of pertinency (*id.* at 211–214). In *Barenblatt*, 360 U.S. at 124–125, the latter three factors were relied on to show that the witness was apprised of the subject under investigation. In the instant case, petitioner was apprised of the subject under inquiry by the statements of Committee counsel and the Acting Chairman, as well as by the questions asked him which preceded the questions he refused to answer.

1. The pertinency of the question which petitioner refused to answer is clear as a matter of law. As the district court found, the subcommittee was investigating the general subject of "the infiltration of Communism into educational and labor fields" (R. 32; see also R. 33). This was the same general subject of inquiry as in *Barenblatt*. Petitioner was subpoenaed to testify at a particular hearing pursuing this investigation with regard to the Albany area, which heard testimony concerning Communist activity at Cornell University (see *supra*, pp. 3–6). Petitioner received a continuance at his request and subsequently appeared at a hearing in Washington. Committee counsel informed him at the beginning of his testimony that the precise subject which the subcommittee intended to question him about was Communist activity at Cornell University (see *supra*, p. 6). This specific subject was a more carefully defined portion of the broader subjects of Communist

activity in the educational and labor field generally and in the Albany area in particular."[11]

The questions seeking the name of the Cornell faculty member for whom petitioner had acted as liaison with the Party leadership (Count One), the name of the anonymous donor to the Party who had given him $100 while he was at Cornell (Count Two), and the name of the student who had solicited his membership in the Party (Count Five) were pertinent on

[11] Petitioner complains (Pet. Br. 29–40) of a variance between the "subject under inquiry" as proved at the trial and as urged by the government on appeal, in that at the trial the government proved the "subject" was Communist activities in the Albany area and/or Communism in the field of labor, not Communism in the field of education. This "variance" argument, even if consequential, is completely unsupported by the record. In his opening statement at the trial, the prosecutor pointed out that the subcommittee was interested, not only in Communist infiltration generally, but also "in the field of labor and in the field of education" (Tr. 9). The government introduced the portion of the transcript of the subcommittee hearings containing the statement of Committee counsel that the subject under investigation was Communist activity at Cornell (R. 293). The trial judge, as finder of fact, found that the "Committee was investigating the infiltration of Communism into educational and labor fields" (R. 32; see also R. 33). The government's main brief in the court of appeals quoted the finding of the trial court as the subject under inquiry (p. 3), stated that the subcommittee was interested in discovering the extent to which students of industrial relations at Cornell were influenced to select Communist-controlled unions for summer work (pp. 4–5), and then demonstrated at length that Communist activity in labor or education was being investigated by the subcommittee when petitioner testified (pp. 15–17). And the government's reply memorandum in the court of appeals asserted (p. 5): "The precise topic of the investigation here * * * was Communist activities at Cornell University * * *."

their face to the subject of Communist activity at Cornell. The question concerning whether petitioner was acquainted with Homer Owen (Count Four), while perhaps not pertinent on its face, was in fact pertinent as the record of petitioner's trial showed. A previous witness, Ross Richardson, had informed the subcommittee that Owen, a student at Cornell from 1947 or 1948 to 1952 (R. 22), was one of six members of a Communist graduate group (R. 284). Petitioner, on the other hand, told the subcommittee that he was the only person in the group (R. 299). Thus, the question concerning Homer Owen was an introductory question preliminary to further questions inquiring into Owen's Communist activity at Cornell [12] and into the discrepancy between petitioner's and Richardson's testimony.

Petitioner argues (Pet. Br. 41–43) that no legislative purpose was served by asking petitioner about the names of his associates in the Party. But while this contention is framed in terms of legislative purpose, it is in reality a claim that these questions were not pertinent to the subject under inquiry (see Pet. Br. 25). In fact, however, the disclosure of other persons engaged in Communist activities is, and was in this case, pertinent for at least two legitimate purposes; first, to obtain information concerning the number and importance of persons engaged in the Communist activity under inquiry; and, second, to discover new witnesses who might have information

[12] While Owen had testified before the Committee in executive session (R. 22–24), petitioner's knowledge of Owen's activities would test the accuracy and completeness of Owen's testimony.

concerning Communist activity not known to the witness before the committee.

We know of no judicial decision holding that personnel is not pertinent to the subject of Communist activity. On the contrary, the Court of Appeals for the District of Columbia Circuit has explicitly held in *Barsky* v. *United States*, 167 F. 2d 241, 246 (C.A. D.C.), certiorari denied, 334 U.S. 843:

> If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. * * *

Accord, *Morford* v. *United States*, 176 F. 2d 54, 57 (C.A. D.C.), reversed on other grounds, 339 U.S. 258. Similarly, in *McPhaul* v. *United States*, 364 U.S. 372, 381, this Court recently held, with regard to the pertinency of records subpoenaed from the Civil Rights Congress:

> It would seem clear enough that the auspices under which the Civil Rights Congress was organized, the *identity and extent of its affiliations, the source of its funds and to whom distributed* would be prime considerations in determining whether the organization was being used by the Communists in the Detroit area. If the Civil Rights Congress was affiliated with known Communist organizations, or if its funds were received from such organizations or were used to support Communist activities in the Detroit area, those facts, it is reasonable to suppose, would be shown by the records called

> for by the subpoena, and those facts would be highly pertinent to the Subcommittee's inquiry [into Communist activity in the Detroit area]. [Emphasis added.]

Cf. *United States* v. *Bryan*, 339 U.S. 323; *United States* v. *Fleischman*, 339 U.S. 349. In short, both logically and by judicial precedent, the disclosure of names of other persons engaged in the Communist activity under scrutiny is just as pertinent to an investigation of an aspect of Communist activity as is the disclosure whether the witness himself is a Party member.

2. The record shows conclusively that petitioner was adequately apprised of the pertinency of the questions at the subcommittee hearings. Immediately prior to his testimony before the subcommittee, counsel for the Committee specifically informed him that the subject under inquiry was the existence of Communist groups at Cornell University (see *supra*, p. 6). Counsel explained that the subcommittee wished to question petitioner because it had information that he had participated in at least one of these groups (R. 293). Except for objections to the jurisdiction and constitutionality of the Committee (see *supra*, p. 18), petitioner stood mute in the face of counsel's statement as to why he had been called as a witness. Petitioner was informed that Richardson had identified him as the individual who had acted as liaison between the Communist campus group and a member of

the faculty (R. 294). Petitioner was then asked a series of questions which directly and obviously related to the activity of Communist groups at Cornell: *e.g.*, whether he was a member of the Communist Party while a student at Cornell; whether he was a member of the Party's central committee at Cornell; how many persons attended Party meetings there (R. 298–299). Among the questions which directly and obviously related to the subject under inquiry were at least three which petitioner refused to answer and for which he was convicted for contempt: the name of the faculty member for whom he had acted as liaison with the Party leadership; the name of the anonymous donor to the Party; and the student who successfully solicited his Party membership [13] (see *supra*, pp. 18–19). The pertinency of these questions to the subject of Communist activity at Cornell was clear beyond doubt, especially to a well-educated man with both a Bachelor's and a Master's degree (R. 293), who had the advice of counsel. Cf. *Barenblatt* v. *United States, supra*, 360 U.S. at 124–125.

[13] The pertinency of the question concerning Homer Owen (Count Four of the indictment) is perhaps less obvious on its face. Petitioner, however, had indicated that he had some familiarity with the testimony of Ross Richardson (R. 295), who identified Owen as a member of the Communist graduate group at Cornell (R. 284). In any event, if petitioner understood the pertinency of any one of the four questions on which he was convicted, this would be sufficient to sustain his conviction and sentence. *Barenblatt* v. *United States, supra*, 360 U.S. at 126, note 25.

II. PETITIONER HAS NO STANDING TO CLAIM THE PROTECTION OF THE FIRST AMENDMENT. IN ANY EVENT, THE SUBCOMMITTEE'S INVESTIGATION DID NOT VIOLATE THAT PROVISION OF THE CONSTITUTION

In *Barenblatt* v. *United States, supra,* this Court considered, *inter alia,* whether a question asked by a congressional committee as to a witness' own membership in the Communist Party violated the First Amendment (360 U.S. at 126). In deciding this issue, the Court held (*ibid.*):

> [T]he protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. * * *

To strike this balance, the courts must first determine whether the "investigation was related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose" (*id.* at 127). In this case, as in *Barenblatt,* there was a valid legislative purpose and the public interest predominates.

A. PETITIONER HAS NO STANDING TO INVOKE THE FIRST AMENDMENT

While we will discuss petitioner's First Amendment claim on the merits (*infra,* pp. 36–43), we submit that petitioner has no standing to raise this issue.

First, petitioner failed to raise the issue at the time he testified before the subcommittee; and, second, petitioner is in reality raising the First Amendment rights of other persons with whom he has no sufficient connection, not his own rights.

1. *Petitioner failed to rely on the First Amendment before the subcommittee.*—As we have shown above with regard to the issue of pertinency (pp. 18–20), petitioner relied primarily, in refusing to answer the questions on which he was convicted, on his "moral scruples" against disclosing the names of other persons. The only intimations, no matter how faint, of a First Amendment claim were two statements that the subcommittee was acting unconstitutionally (see *supra*, pp. 18–19). This general constitutional objection, which was made with the advice of counsel (R. 293), in no way specified or even suggested that petitioner was claiming any rights under the First Amendment.

We have already pointed out (*supra*, pp. 14–17) that it is now well established by decisions of this Court that a witness before a congressional committtee can raise at his trial for contempt only those objections which he stated to the committee at the time he refused to answer its questions. In *Ullmann* v. *United States*, 350 U.S. 422, 439, note 15, this Court likewise refused to consider a First Amendment claim which was not raised by the witness when questions were propounded before a grand jury. There, the Court stated, in language which is equally applicable here (*ibid.*):

> Petitioner contends that some of the questions which he was asked are objectionable because

> they require testimony that is protected by the First Amendment. But it is every man's duty to give testimony before a duly constituted tribunal unless he invokes some valid legal exemption in withholding it. * * * *

And the *Barenblatt* case demonstrates that objections, in order to be raised at trial, must be specific, rather than "buried * * * in the context of [a] general challenge to the power of the Subcommittee" (360 U.S. at 124). Applying these standards to the instant case, petitioner's general objection to the subcommittee did not raise a First Amendment claim which he could subsequently assert at his trial.

2. *Petitioner cannot claim the First Amendment rights of other persons.*—Petitioner admitted that he was a member of the Communist Party and only refused to answer questions concerning the activities of others. These questions did not interfere with his own rights of speech and association as protected by the First Amendment since any interference with those rights[14] had already occurred when he testified as to his own activities. While conceivably he might be reluctant to associate with others if he knew that he would have to divulge their names to a congressional committee, the reason for this reluctance was his own moral scruples against testifying about other persons. But "moral scruples," if not based on some valid legal ground, are not legal justification for refusing to answer. Insofar as inquiry by the subcommittee might inhibit petitioner's own

[14] We do not concede that there was any invalid interference with such rights, and *Barenblatt* holds that there was none.

speech or association, it is entirely as a result of petitioner's moral beliefs which are not protected by the First Amendment. Insofar as the questions asked petitioner might involve rights which are protected by the First Amendment, they would be the rights of association and speech of other persons who conceivably might be inhibited by the knowledge that their activities could be revealed by colleagues to an investigating committee.

In numerous cases, this Court has established that only persons who are adversely affected by a statute which is directly applicable to themselves have standing to question its constitutionality. This is an application of the constitutional principle that the federal courts have power only to decide "cases" or "controversies." See, *e.g.*, *Tyler* v. *Judges of the Court of Registration*, 179 U.S. 405, 406; *Massachusetts* v. *Mellon*, 262 U.S. 447, 487; *Gange Lumber Co.* v. *Rowley*, 326 U.S. 295, 305–308; *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 347–348 (Mr. Justice Brandeis concurring); *Coleman* v. *Miller*, 307 U.S. 433, 460–470 (Mr. Justice Frankfurter concurring). There is no doubt here that the governmental action directly affected petitioner and that therefore a case or controversy is involved. The true issue, instead, is whether petitioner can raise in his defense a constitutional right which belongs to other persons.

This Court has also long ago settled that, in the absence of exceptional circumstances, a litigant can raise only his own constitutional rights. For example, a defendant cannot complain of an illegal search and seizure under the Fourth Amendment unless he

himself has been injured by it. *Jones* v. *United States*, 362 U.S. 257, 260–267.[15] Similarly, the Fifth Amendment privilege against self-incrimination is exclusively personal. See *Hale* v. *Henkel*, 201 U.S. 43; *Rogers* v. *United States*, 340 U.S. 367. In *Tileston* v. *Ullman*, 318 U.S. 44, the Court unanimously dismissed an appeal by a physician from a decision of a state court upholding the constitutionality of a statute prohibiting the use of drugs or instruments to prevent contraception and the giving of assistance in their use (*id.* at 46):

> We are of the opinion that the proceedings in the state courts present no constitutional question which appellant has standing to assert. The sole constitutional attack upon the statutes under the Fourteenth Amendment is confined to their deprivation of life—obviously not appellant's but his patients'. There is no allegation or proof that appellant's life is in danger. His patients are not parties to this proceeding and there is no basis on which we can say that he has standing to secure an adjudication of his patients' constitutional right to life, which they do not assert in their own behalf. *Cronin* v. *Adams*, 192 U.S. 108, 114; *Standard Stock Food Co.* v. *Wright*, 225 U.S. 540; *Bosley* v. *McLaughlin*, 236 U.S. 385, 395; *Blair* v. *United States*, 250 U.S. 273; *The Winnebago*, 205 U.S. 354, 360; *Davis & Farnum Mfg. Co.* v. *Los Angeles*, 189 U.S. 207, 220. * * *

[15] *Jones* held that a person legitimately on the premises at the time of the allegedly illegal search and seizure is sufficiently injured to claim the Fourth Amendment even though he was only a "guest" or "invitee."

These principles of constitutional adjudication necessarily apply not only when a statute is involved, but when any governmental action, including a legislative investigation, is challenged.

The only significant exception to the rule that a litigant can raise only his own constitutional rights against allegedly invalid governmental action is when the litigant can properly be said to represent the persons whose constitutional rights were allegedly violated, and, in addition, the litigant himself was seriously injured. In *Pierce* v. *Society of Sisters*, 268 U.S. 510, the state had passed a law requiring parents to send their children to public schools. The Court allowed two corporations to invoke the Fourteenth Amendment rights of patrons of their schools in order to protect their own business and property from destruction by unconstitutional governmental action taken against their patrons. *Id.* at 535. In *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, the Court considered a claim that plaintiff organizations were deprived of due process by the action of the Attorney General in labelling them as "Communist" without notice or hearing. The resulting lists were turned over to the Loyalty Review Board for use in connection with determinations of disloyalty of government employees. In the circumstances, two concurring opinions indicated that an organization could raise the constitutional rights of its members. Mr. Justice Frankfurter stated (*id.* at 159):

> The threat which it carries for those members who are, or propose to become, federal employees makes it not a finicky or tenuous claim

> to object to the interference with their opportunities to retain or secure such employment as members. The membership relation is as substantial as that protected in *Traux* v. *Raich*[16] and *Pierce* v. *Society of Sisters* * * *.

And Mr. Justice Jackson similarly stated (*id.* at 187):

> [T]he Government has lumped all the members' interests in the organization so that condemnation of the one will reach all. The Government proceeds on the basis that each of these associations is so identical with its members that the subversive purpose and intents of the one may be attributed to and made conclusive upon the other. Having adopted this procedure in the Executive Department, I think the Government can hardly ask the Judicial Department to deny the standing of the organizations to vindicate its members' rights.

In *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 458–460, the Court adopted the reasoning of the two concurring opinions in *Joint Anti-Fascist* in holding unconstitutional the state's attempt to compel the Association to disclose its membership list. The Court repeated

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[16] In *Truax* v. *Raich*, 239 U.S. 33, a state statute prohibited businesses from employing more than twenty percent aliens. The Court upheld the right of an alien-employee to enjoin officers of the state from enforcing the statute even though the statute penalized only employers. The issue was of the kind, not involved in the instant case, as to whether the litigant was sufficiently affected by the statute to challenge it (see *supra*, p. 30), and the Court held that the alien was directly affected. There was no question whether the alien could raise the constitutional rights of another person since the right to work and earn a livelihood, which was the constitutional right invoked, was the alien's own right, not the employer's.

its settled rule embodied in *Tileston* v. *Ullman, supra,* and then held that this rule was not violated by allowing an association to assert the constitutional rights of its own members to freedom of association, at least when there was no other way these rights could be effectively vindicated (357 U.S. at 459–460):

> Petitioner is the appropriate party to assert these rights, because it and its members are in every practical sense identical. The Association * * * is but the medium through which its individual members seek to make more effective the expression of their own views. The reasonable likelihood that the Association itself through diminished financial support and membership may be adversely affected if production is compelled is a further factor pointing toward our holding that petitioner has standing to complain of the production order on behalf of its members. Cf. *Pierce* v. *Society of Sisters,* * * *.

Subsequently, in *Uphaus* v. *Wyman,* 360 U.S. 72, the Court was faced with the analogous problem whether the director of a summer camp could assert the constitutional rights of his guests in refusing to comply with a state order to produce the names of the guests. The Court, however, refused to decide this issue (*id.* at 77–78) and held that Uphaus' claims, assuming he had standing to raise them, were invalid on their merits.

We submit that petitioner's assertion of the rights of the unknown faculty member, the anonymous donor, Homer Owen, and the person who had solicited his Party membership goes far beyond the circum-

stance of *Pierce, Joint Anti-Fascist, N.A.A.C.P.,* and *Uphaus.* In *Joint Anti-Fascist* and *N.A.A.C.P.,* organizations were asserting the rights of their own members on matters of common concern. In *Pierce,* where the individuals did not actually belong to the organizations which brought the action, nevertheless the organizations and the individuals (schools and their patrons) were integrally related, especially with regard to the impact of the particular statute and constitutional right involved in the case. Moreover, the organizations were threatened with direct and severe harm, indeed destruction, if the statute were enforced. Similarly, in *Uphaus,* while the individuals involved were, strictly speaking, guests and not members of an organization, they too were integrally related to the organization. And Uphaus, as the executive director of the organization, was asserting the right of the organization to represent its guests in a matter of common concern. In contrast, in the instant case, petitioner is, of course, not an organization to which the third persons belonged, or of which they were guests or patrons; nor is he an officer who can claim to represent such an organization. Petitioner's only connection with the unnamed third persons is at most one of friendship and common membership, in the recent past, in the Communist Party. This is not a sufficiently close relationship to allow him to raise and vindicate their rights. If it were held to be adequate, large inroads would be made in the settled principle that a litigant is limited to the prosecution of his own rights.

B. THE SUBCOMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE

Even if the Court were to consider the First Amendment rights of other persons at the instance of petitioner, the Court should hold that such rights were not violated.

When it subpoenaed and sought to question petitioner, the subcommittee had under inquiry the subject of "infiltration of Communism into educational and labor fields" in the Albany, New York, area, and specifically at Cornell University (see *supra*, pp. 21–22). Any question whether Congress has the power to investigate Communist activity in the field of education has been determined by this Court's holding in *Barenblatt* v. *United States*, *supra*. There, the Court first stated generally that "Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof" (360 U.S. at 127), and that "[j]ustification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence" (*id.* at 128). The Court then turned to the specific issue which was before it, and which is likewise involved in the instant case, and held that "investigatory power * * * is not to be denied Congress solely because the field of education is involved" (*id.* at 129).

In addition, the Communist activity in the field of education involved here was interrelated with Communist activity in the labor field. The subcommittee

had heard testimony that students in the Cornell School of Industrial and Labor Relations were accepting positions with Communist-controlled labor unions (see the Statement, *supra*, p. 3). One of the students in that school, Homer Owen, had been named by Ross Richardson, another witness before the subcommittee, as being a member of the Communist group to which petitioner had also belonged (R. 284).

The power of Congress to investigate Communist activity in the labor field is, if anything, less restricted than its power to investigate such activity in the field of education. As the concurring opinion in *Sweezy* v. *New Hampshire*, 354 U.S. 234, 261–263, indicated, education may be entitled to particular protection under the First and Fourteenth Amendments. On the other hand, *American Communications Assn.* v. *Douds*, 339 U.S. 382, upheld broad congressional power to legislate, and a *fortiori* to investigate, concerning Communist activity in labor and industry. Since the subcommittee's investigation of Communist activity in education was so closely interrelated with its investigation of Communist activity in labor unions, its constitutional power and valid legislative purpose is even clearer than in *Barenblatt*.

Petitioner, however, contends (Pet. Br. 41–43) that this case is unlike *Barenblatt* because here the witness was asked the names of his associates. He asserts that "there is no legislative purpose to be served by compelling the disclosure of" "the names of his associates" (Pet. Br. 41). We have shown above (pp. 23–25) that the names of other persons engaged in Communist activity are pertinent

and extremely useful to an investigation of such activity. This Court recognized in *Barenblatt* that Congress has the constitutional power to investigate Communist activity generally because that activity involves serious danger to the country (360 U.S. at 128–129). Since the questions asked petitioner were directly pertinent to an important subject of congressional investigation, the questions had a valid legislative purpose. Cf. *Uphaus* v. *Wyman*, 360 U.S. 72, upholding the constitutional power of the State, in investigating subversion, to compel disclosure of a list of all the persons who had attended a summer camp. In short, we submit that the same valid legislative purpose which was found in *Barenblatt* was present here.

Petitioner seems to suggest that, whether or not the questions were pertinent, they could not be legislatively useful. But this claim assumes the nature of petitioner's answers; it is not hard to conceive of answers to the subcommittee's questions which would open up whole new areas of investigation and perhaps legislation. And of course the subcommittee's purpose must be judged on the basis of the questions, not on the witness' answers—and particularly not on the basis of answers which were never given. Petitioner's argument is the same type of "constricted view of the nature of the investigatory process" (360 U.S. at 130) which was rejected in *Barenblatt*. The Court emphasized that, in order to inquire of a witness concerning Communist activities, it was not necessary to have proof meeting "[t]he strict requirements of a prosecution under the Smith Act,"

since "of necessity the investigatory process must proceed step by step" (*ibid.*). Similarly, the court below has held in *Townsend* v. *United States,* 95 F. 2d 352, 361 (C.A. D.C.), certiorari denied, 303 U.S. 664:

> A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress. *McGrain* v. *Daugherty,* 273 U.S. 135 * * *. A judicial inquiry relates to a *case,* and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates *all possible cases* which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad. * * * [Emphasis in the original.]

C. THE BALANCE OF INDIVIDUAL AND GOVERNMENTAL INTERESTS SUPPORTS THE SUBCOMMITTEE'S INQUIRY

This Court in *Barenblatt* considered questions asked by a congressional committee of a college teacher about his own Communist Party activities. The Court concluded that "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and * * * therefore the provisions of the First Amendment have not been offended" (360 U.S. at 134). The governmental interests at stake in the present case are at least as strong as those in *Barenblatt.*

The Court has found a "close nexus between the Communist Party and violent overthrow of government" (*Barenblatt,* 360 U.S. at 128) and has therefore upheld broad governmental powers to investigate and legislate on Communist activities. *Id.* at 128–

129; *American Communications Assn.* v. *Douds,* 339 U.S. 382; *Garner* v. *Los Angeles Board,* 341 U.S. 716; *Galvan* v. *Press,* 347 U.S. 522; *Harisiades* v. *Shaughnessy,* 342 U.S. 580; *Carlson* v. *Landon,* 342 U.S. 524; *Dennis* v. *United States,* 341 U.S. 494; *Lerner* v. *Casey,* 357 U.S. 468. Thus, the strong governmental interest in Communist activity generally has been repeatedly recognized by this Court. The Court has also recognized that the threat of Communist activities and propaganda on the campus and in the classroom is a matter of particular government concern. *Adler* v. *Board of Education,* 342 U.S. 485, 493. Here, as in *Barenblatt,* the Committee had considerable evidence of Communist activity at a major educational institution (see the Statement, *supra,* pp. 3–6). Moreover, since here the Communist activity in the field of education was found to be interrelated with Communist activity in the labor field, the awareness by Congress of the full extent of those activities becomes all the more important (see *supra,* pp. 36–37).

Barenblatt noted three particular factors in weighing the governmental interest against that of the individual (360 U.S. at 134). First, the Court found that "[t]here is no indication in this record that the Subcommittee was attempting to pillory witnesses" (*ibid.*). Similarly, there is no such indication in the record in the instant case. On the contrary, the subcommittee explained the subject and legislative purpose of the inquiry with clarity (R. 293, 295–296) and patiently explained its reasons for rejecting petition-

.er's objections to its jurisdiction and questions (R. 294, 295–296).

Second, the Court found that Barenblatt's "appearance as a witness [did not] follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee" (360 U.S. at 134). Here, the subcommittee had received information that petitioner was a member of a student Communuist Party group at Cornell (R. 17, 287); that he was the only member of this group who knew the identity of a person on the faculty who was a member of the Communist Party (R. 17, 287); that petitioner had turned over to a member of the Communist group a contribution of one hundred dollars received by him for Party work from an unknown source (R. 287); and that Homer Owen was a member of the same Party group (R. 284). Moreover, petitioner himself admitted to the subcommittee, before he was asked any of the questions on which he was convicted, that he had been one of a Communist Party group at Cornell.[17] Certainly, this information was a sufficient basis for the subcommittee to ask petitioner to disclose the names of the faculty member, the contributor to the Party, and the person who solicited his membership in the student Party group, and to reveal his acquaintance, if any, with Homer Owen.

Third, in *Barenblatt* the Court said that "the relevancy of the questions put to [Barenblatt] by the Subcommittee is not open to doubt" (360 U.S. at 134).

[17] Petitioner also admitted knowing the name of the anonymous donor when he refused to answer that question (R. 298).

Similarly, here, as shown above (pp. 21–25), the questions asked petitioner were clearly relevant to the subject under inquiry.

In addition to these considerations specifically noted in *Barenblatt,* at least two other factors support the same result here. In that case, the Court sustained questions whether Barenblatt was ever a Party member and whether he belonged to a Party club at least four years before the committee hearings (360 U.S. at 114, 126 at note 25). Here, as petitioner admitted, less than a year had elapsed from the end of the Communist activities at Cornell as to which he was questioned until the time he refused to answer the questions at the subcommittee's hearing (R. 298–299). Thus, if petitioner had answered the questions asked him, the subcommittee would have received timely, as well as probably important, information.

The second additional factor is that the private interests here are, at best, no greater than in *Barenblatt,* and are probably weaker. If petitioner has standing to assert the First Amendment rights of other persons (but see *supra,* pp. 29–35), his individual interest in this assertion is substantially less than the interest Barenblatt had in claiming his own First Amendment rights. Petitioner, because of his moral scruples, has chosen to protect what he believes to be the First Amendment rights of other persons who have apparently no more intimate connection with himself than friendship. Barenblatt, in contrast, had the direct interest of protecting his own privacy of belief, association, and activity. Insofar as petitioner is concerned, therefore, there is even more reason in the

circumstances of this case than in *Barenblatt* to strike the balance in favor of the governmental, rather than individual, interest. And insofar as the case is viewed from the standpoint of the other persons, their interest in preventing disclosure through third parties (such as petitioner) of their beliefs and activities is less than their interest in not being compelled themselves to testify as to those matters. But *Barenblatt* holds that if these others—the faculty member, the donor, the solicitor of Party membership, Homer Owen—were themselves called before the subcommittee, they would have to answer such questions as to their own conduct. At the very most, petitioner, in claiming the rights of these others, stands in the same position as if they were claiming their rights for themselves—that is, the same position as Barenblatt was in. Thus, this Court's decision in *Barenblatt* is, we believe, inescapably controlling.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court of appeals should be affirmed.

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SUPREME COURT OF THE UNITED STATES

No. 233.—October Term, 1960.

Bernhard Deutch, Petitioner, v. United States.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June 12, 1961.]

Mr. Justice Stewart delivered the opinion of the Court.

Once again we are called upon to review a criminal conviction for refusal to answer questions before a subcommittee of the Committee on Un-American Activities of the House of Representatives.[1] See *Quinn* v. *United States*, 349 U. S. 155; *Emspak* v. *United States*, 349 U. S. 190; *Watkins* v. *United States*, 354 U. S. 178; *Barenblatt* v. *United States*, 360 U. S. 109; *Wilkinson* v. *United States*, 365 U. S. 399; *Braden* v. *United States*, 365 U. S. 431. The petitioner was brought to trial in the District Court for the District of Columbia upon an indictment which charged that he had violated 2 U. S. C. § 192 by refusing to answer five questions "which were pertinent to

[1] "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months." 2 U. S. C. § 192.

the question then under inquiry" by the subcommittee. He waived a jury and was convicted upon four of the five counts of the indictment. The judgment was affirmed by the Court of Appeals, 280 F. 2d 691, and we brought the case here because of doubt as to the validity of the conviction in the light of our previous decisions.[2] 364 U. S. 812. A careful review of the trial record convinces us that the District Court should have ordered an acquittal.

At the trial the Government's case consisted largely of documentary evidence. That evidence showed that a subcommittee of the House Committee on Un-American Activities conducted hearings in Albany, New York, in July of 1953, and again in early April of 1954. The petitioner was not present on either occasion. He was subpoenaed to appear before the subcommittee in Albany on April 9, 1954, but, at the request of his counsel, it was agreed that he should appear instead before the subcommittee three days later in the Old House Office Building in Washington, D. C.

He appeared there on the appointed day, accompanied by counsel, and without further ado his interrogation began. The petitioner freely answered all preliminary questions, revealing that he was then twenty-four years old and a graduate student at the University of Pennsylvania. He stated that his early education had been in the public schools of Brooklyn, New York, from where he had gone to Cornell University in 1947 for four years as an undergraduate and two additional years as a graduate student.

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[2] See, in addition to the cases cited in the text, *supra*: *Sinclair* v. *United States*, 279 U. S. 263; *United States* v. *Bryan*, 339 U. S. 323; *United States* v. *Fleischman*, 339 U. S. 349; *United States* v. *Rumely*, 345 U. S. 41; *Sacher* v. *United States*, 356 U. S. 576; *Flaxer* v. *United States*, 358 U. S. 147. See also *McPhaul* v. *United States*, 364 U. S. 372.

The subcommittee's counsel then made the following statement:

> "Mr. Deutch, during hearings at Albany last week, the committee heard testimony regarding the existence of a Communist Party group or cell operating among undergraduates at Cornell University, among certain graduates at Cornell and in the city of Ithaca.
>
> "In connection with that testimony, the committee was informed that you were a member of one or more of those groups. If so, I would like to ask you certain matters relating to your activity there.
>
> "Were you a member of a group of the Communist Party at Cornell?"

The petitioner answered, "under protest," that he had indeed been a member of the Communist Party while at Cornell.[3] He then testified freely and without further objection as to his own activities and associations. He stated that "from the age of 13 or 14 I had read many books on Marxism and at that time was very much impressed with trying to solve certain of the injustices we have nowadays." He said that when he got to college "I felt if I had ideas I shouldn't be half pregnant about them, so when I came to college I was approached and joined." He stated that the approach to join the Party had been made by a student.

As to the general nature of his Communist Party activities at Cornell, he said "about all that happened were bull

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[3] "I will answer that question, but only under protest.

"I wish to register a challenge as to the jurisdiction of this committee under Public Law 601, which is the committee's enabling legislation. This question, or any similar questions involving my associations, past or future, I am answering, but only under protest as to its constitutionality. But, under your jurisdiction as stated, I answer yes, I was a member of the Communist Party."

sessions on Marxism, and some activities like giving out a leaflet or two. The people I met didn't advocate the overthrowing of the Government by force and violence, and if they had, I wouldn't have allowed it." He testified that he had known one faculty member at Cornell who was a Communist, but that this person had quit the Party. He stated that he had once received from "a personal friend," who was not connected with the Cornell faculty, a $100 contribution to give to the Party. He stated that he had been the only graduate student at Cornell who was a Communist, and that, as the "head" (and lone member) of the "graduate group," he had attended meetings in a private house where a "maximum of 4 or 5" people were present. Many of his answers indicated a lack of awareness of the details of Communist activities at Cornell.[4] The petitioner testified that as of the time

[4] The following colloquies are typical:

"Mr. Doyle: Who published the leaflets?

"Mr. Deutch: I believe the Communist Party published them.

"Mr. Doyle: What Communist Party? Where did you get the leaflets? From the national headquarters?

"Mr. Deutch: I don't believe so. It was a local branch.

"Mr. Doyle: Where was the office of the local branch from which you got these leaflets?

"Mr. Deutch: I didn't know where it was. I was just asked to distribute them."

"Mr. Tavenner: Were you ever a member of the Downtown Club of the Communist Party in Ithaca?

"Mr. Deutch: I don't believe so.

"Mr. Tavenner: Did you attend meetings of that group?

"Mr. Deutch: No. That is, I don't believe so. The reason I wonder is because that organization became defunct so that there was really no organization. Downtown was Uptown, and there were so few people that I just want to qualify that statement."

"Mr. Scherer: Let me ask you this question. You knew where the meetings were held?

"Mr. Deutch: I don't believe I know exactly where they were. This is because—since Mr. Richardson drove me there." [Mr. Rich-

of the hearings he was no longer a member of the Communist Party, but he volunteered the information that "[t]o a great extent it is only fair to say I am a Marxist today—I don't want to deny that."

While the petitioner's answers to the many questions put to him about his own activities and conduct were thus fully responsive, he refused to answer five questions he was asked concerning other people. He declined to give the names of the faculty member who had been a Communist, of the friend who had made the $100 contribution, of the student who had originally approached him about joining the Communist Party, and of the owners of the house where the meetings had been held. He also declined to say whether he was acquainted with one Homer Owen. For his refusal to answer these questions he was indicted, tried, and convicted.[5]

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ardson was a law student at Cornell who had joined the Communist Party at the behest of the Federal Bureau of Investigation. See p. —, *infra*.]

[5] The questions, as set out in the five counts of the indictment, were as follows:

"Count One

"The committee was advised that a witness by the name of Ross Richardson has stated that you acted as liaison between a Communist Party group on the campus and a member of the faculty at Cornell, and that you knew the name of the member of that faculty, who was a member of the Communist Party. Will you tell us who that member of the faculty was?

"Count Two

"Will you tell the committee, please, the source of that $100 contribution, if it was made?

"Count Three

"Where were these meetings held?

"Count Four

"Were you acquainted with Homer Owen?

"Count Five

"The witness is directed to give the name of the person by whom he was approached."

The petitioner was convicted on all but Count Three.

The reason which the petitioner gave the subcommittee for his refusal to answer these questions can best be put in his own words:

> "Sir, I am perfectly willing to tell about my own activities, but do you feel I should trade my moral scruples by informing on someone else? * * * * * I can only say that whereas I do not want to be in contempt of the committee, I do not believe I can answer questions about other people, but only about myself. * * * * * I happen to have been a graduate student—the only one there, and the organization is completely defunct, and the individual you are interested in wasn't even a professor. The magnitude of this is really beyond reason."

The chairman of the subcommittee ruled that it was the petitioner's duty nevertheless to answer the questions:

> "That decision does not rest with you as to whether or not the scope of this inquiry—as to whether or not certain individuals are important now or not. That is the responsibility of we Representatives to determine. That determination cannot rest with you. It may be very true that the individual to whom you have referred is no longer a member of the Communist Party. However, that is a supposition on your part—and a supposition which the committee cannot accept. * * * * * I think that it is only fair to advise the witness—again advise the witness—that any scruples he may have due to a desire to protect friends and acquaintances, is not a legal reason for declining to answer the questions which are now being put to you, and which will be put to you by counsel."

In an effort to prove the pertinence of the questions which the petitioner had refused to answer, the Government offered at the trial the transcripts of the opening

statements of Subcommittee Chairman Kearney at the Albany hearings in 1953 and 1954 and of Subcommittee Chairman Velde at a hearing in Chicago in 1954, as well as an additional portion of the transcript of the 1954 Albany hearing. One witness, the counsel for the Committee on Un-American Activities, testified. A review of this evidence convinces us that the Government failed to prove the charge in the indictment that the questions which the petitioner refused to answer were "pertinent to the question then under inquiry" by the subcommittee before which he appeared.

The Chairman's opening statement at the Albany hearing in 1953 consisted largely of a paraphrase of the Committee's authorizing resolution and a general summary of the Committee's past activities.[6] The only statement of a specific purpose was as follows:

> "The committee, in its course of investigation, came into possession of reliable information indicat-

[6] "The committee is charged by the Congress of the United States with the responsibility of investigating the extent, character and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin, and attacks the principles of the form of government as guaranteed by our Constitution and all other questions in relation thereto that will aid Congress in any necessary remedial legislation.

"It has been fully established by testimony before this and other congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy, which is being used as a tool or a weapon by a foreign power to promote its own foreign policy and which has for its objective the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence if necessary. This organization cannot live and expand within the United States except by the promulgation and diffusion of subversive and un-American propaganda designed to win adherence to its cause.

"The first witness in this hearing will testify regarding certain aspects of the worldwide Communist conspiracy, which should dem-

ing Communist Party activities within the Albany area. The committee decided that this information was of such a character as to merit an investigation to determine its nature, extent, character, and objects."

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onstrate what a serious matter it is to permit individuals who are subject to the directives and discipline of the Communist Party to be placed in positions of leadership in any functional organization.

"The committee, in its course of investigation, came into possession of reliable information indicating Communist Party activities within the Albany area. The committee decided that this information was of such a character as to merit an investigation to determine its nature, extent, character, and objects.

"Many witnesses have appeared before this committee, sitting in various places throughout the United States, and have revealed their experiences as former Communist Party members. Such testimony has added immeasurably to the sum total of the knowledge, character, extent, and objects of Communist activities in this country.

"Witnesses from Hollywood, labor unions, the legal profession, medical profession, and other groups have made a great contribution to the defense of our country by disclosing to this committee facts within their knowledge.

"In the view of this committee, such testimony should not be held against an individual where it has that character of trustworthiness which convinces one that the witness had completely and finally terminated Communist Party membership and that such testimony has been given in all good faith.

"The committee is not concerned with the political beliefs or opinions of any witness who has been called before it. It is concerned only with the facts showing the extent, character, and objects of the Communist Party activities.

"In keeping with the long-standing policy of this committee, any individual or organization whose name is mentioned during the course of the hearings in such a manner as to adversely affect them shall have an opportunity to appear before the committee for the purpose of making a denial or explanation of any adverse references.

"I would also like at this time, before the beginning of these hearings, to make this announcement to the public: We are here at the discretion of the Congress of the United States, trying to discharge a duty and obligation that has been placed upon us. The public

At the opening of the Albany hearings in 1954 the Chairman stated that the subcommittee would "resume this morning the investigation of Communist Party activities within the capital area." He made clear that the hearings were "a continuation of the open hearings which were conducted in Albany" in 1953. He pointed out that testimony at the 1953 hearings had "related to the efforts of the Communist Party to infiltrate industry and other segments of society in the capital area." "This committee," he said, ". . . is investigating communism within the field of labor where it has substantial evidence that it exists."

The opening statement of the Chairman of the subcommittee which held hearings in Chicago in 1954 is the same statement that was before this Court in *Watkins* v. *United States*, 354 U. S. 178, 210. As was pointed out in the *Watkins* opinion, Mr. Velde "did no more than paraphrase the authorizing resolution and give a very general sketch of the past efforts of the Committee." [7] Moreover, the statement indicated that that subcommittee hearing was directed primarily towards investigation of activities in the Chicago area: "We are here in Chicago, Ill., realizing that this is the center of the great midwestern area of the United States. It cannot be said that subversive infiltration has had a greater, nor a lesser success in infiltrating this important area. The hearings today are the culmination of an investigation that has been conducted by the committee's competent staff and is a part of the

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is here by permission of the committee and not by any compulsion. Any attempt or effort on the part of anyone to make a demonstration or audible comment in this hearing room, either favorably or unfavorably, toward the committee's undertaking, or to what any witness may have to say, will not be countenanced by the committee. If such conduct should occur, the officers on duty will be requested to eject the offenders from the hearing room."

[7] The entire statement of Mr. Velde is set out at 354 U. S. 210–211, n. 49.

committee's intention for holding hearings in various parts of the country."

The transcript of part of the testimony of two witnesses at the 1954 Albany hearings, John Marqusee and Emmanuel Richardson, was also introduced at the petitioner's trial. These transcripts showed that Marqusee's testimony had related primarily to Communist infiltration of a labor union in Schenectady for which he had worked during a summer vacation in 1948.[8] At that time he had been a student in the New York State School of Industrial and Labor Relations, which, he had testified, was a part of Cornell University. He had told the subcommittee that he had never had any contact with the Communist Party before taking the labor union job. The transcript showed that he had explained that he had taken the job in accordance with the school's requirement "that every student should put forth his efforts in securing a job during the summer, during the intervening summers of his 4-year program, 1 summer with a labor union, 1 with a management group, if possible, and 1 summer with a neutral agency, such as a mediation agency or arbitration service." There was not mention of the Cornell Graduate School, nor of the petitioner, in the transcript of Marqusee's testimony.

The transcript of Richardson's testimony showed that he had testified that as a student at the Cornell Law School in 1950 he had joined the Communist Party at the request of the Federal Bureau of Investigation. He had named several people he had known as Communists on the Cornell campus, including the petitioner and Homer Owen. He had stated that the petitioner had known a member of the Cornell faculty who was a Communist Party member, and that he had once received through the petitioner a contribution to the Party from someone else

[8] Schenectady is sixteen miles from Albany.

of "one hundred and some dollars." The transcript showed that Richardson had also testified at length concerning Communist infiltration into a labor union in a plant in Syracuse where he had worked during the summers of 1951 and 1952.

After these transcripts had been introduced at the petitioner's trial, the Government called its only witness, Frank S. Tavenner, Jr., who had been the "interrogating attorney" at the Albany hearings and at the petitioner's hearing before the subcommittee in Washington.[9] Mr. Tavenner emphasized that the hearing in Washington was a continuation of the Albany hearings, which he characterized as "a general investigation of Communist Party activities in what was referred to as the 'Capital Area.'" Under interrogation of government counsel, the witness expressly disclaimed that the purpose of the Washington hearing had been to investigate Communist activities in educational institutions.[10] He was asked what "connection was there between [the subject of the petitioner's testimony] and the investigations entitled 'Albany, New York'?" This question was never answered.

On this record the District Court found the subject under inquiry to be "the infiltration of Communism into educational and labor fields." 147 F. Supp. at 91. The Court of Appeals never stated what it thought the subject under inquiry by the subcommittee was.

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[9] The subcommittee before which the petitioner appeared, "for the purpose of taking this testimony this morning," consisted of Representative Jackson, Acting Chairman, and Representatives Scherer and Doyle. The subcommittee which had conducted the hearings at Albany a few days earlier was composed of Representative Kearney, Chairman, and Representatives Scherer and Walter.

[10] "Q. How does it happen that Mr. Deutch's testimony appears in 'Education—8' if it was a part actually of 'Albany'?

"A. Well, the staff in the releasing of this testimony at a later date placed it for convenience under the heading of Education."

As our cases make clear, two quite different issues regarding pertinency may be involved in a prosecution under 2 U. S. C. § 192. One issue reflects the requirement of the Due Process Clause of the Fifth Amendment that the pertinency of the interrogation to the topic under the congressional committee's inquiry must be brought home to the witness at the time the questions are put to him. "Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto." *Watkins* v. *United States*, 354 U. S., at 214–215. See *Barenblatt* v. *United States*, 360 U. S., at 123–124. The other and different pertinency issue stems from the prosecution's duty at the trial to prove that the questions propounded by the congressional committee were in fact "pertinent to the question under inquiry" by the committee. "Undeniably a conviction for contempt under 2 U. S. C. § 192 cannot stand unless the questions asked are pertinent to the subject matter of the investigation." *Barenblatt*, *supra*, at 123. "[T]he statute defines the crime as refusal to answer 'any question pertinent to the question under inquiry.' Part of the standard of criminality, therefore, is the pertinency of the questions propounded to the witness." *Watkins*, *supra*, at 208. See *Wilkinson* v. *United States*, 365 U. S., at 407–409, 413; *Braden* v. *United States*, 365 U. S., at 433, 435–436; *Sacher* v. *United States*, 356 U. S. 576, 577; *Sinclair* v. *United States*, 279 U. S. 263, 296–297. These two basically different issues must not be blurred by treating them as a single question of "pertinency."

With regard to the first issue, it is evident that the petitioner was not made aware at the time he was questioned of the question then under inquiry nor of how the

questions which were asked related to such a subject. The chairman made no opening statement, and the petitioner heard no other witnesses testify. The resolution creating the subcommittee revealed nothing. It was merely a general resolution authorizing the creation of a subcommittee to act for the Committee. Committee counsel simply advised the petitioner that the committee had previously heard evidence regarding Communist activity at Cornell, and that he proposed to ask the petitioner "certain matters relating to your activity there." As to his own activity there the petitioner freely testified. When the petitioner declined to give the names of other people, no clear explanation of the topic under inquiry was forthcoming.

It is also evident, however, that the thoughts which the petitioner voiced in refusing to answer the questions about other people can hardly be considered as the equivalent of an objection upon the grounds of pertinency. Although he did indicate doubt as to the importance of the questions, the petitioner's main concern was clearly his own conscientious unwillingness to act as an informer. It can hardly be considered, therefore, that the objections which the petitioner made at the time were "adequate, within the meaning of what was said in *Watkins, supra*, at 214–215, to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection." *Barenblatt, supra*, at 124.

We need not pursue the matter, however, because, in any event, it is clear that the Government at the trial failed to carry its burden of proving the pertinence of the questions. See *Bowers v. United States*, 202 F. 2d 447, 452. The first step in proving that component of the offense was to show the subject of the subcommittee's inquiry. *Wilkinson* v. *United States*, 365 U. S., at 407. As related above the Government offered documentary evidence of statements made by the chairman of the sub-

committees at two hearings in Albany which tended to show that those subcommittees were investigating Communist infiltration in the Albany or "capital" area, particularly in the field of labor.[11] The Government presented one witness who testified that the petitioner's hearing was a continuation of the Albany hearings, and that the subject of those hearings was Communist infiltration in the Albany area. He disavowed any implication that the topic under inquiry was Communism either at Cornell or in educational institutions generally.

Yet the questions which the petitioner was convicted of refusing to answer obviously had nothing to do with the Albany area or with Communist infiltration into labor unions. It can hardly be seriously contended that Cornell University is in the Albany area. Indeed, we may take judicial notice of the fact that Ithaca is more than one hundred and sixty-five miles from Albany, and in an entirely different economic and geographic area of New York. The petitioner was asked nothing about Albany or the Albany area. So far as the record shows, he knew nothing about that subject. He was asked nothing about labor or labor unions. So far as the record shows, he knew nothing about them. He was asked nothing about any possible connection between Cornell or its graduate school and Communist infiltration in Albany. Yet the petitioner was basically a cooperative witness, and there is nothing in the record to indicate that, except for giving the names of others, he would not have freely answered any inquiry the subcommittee wished to pursue with respect to these subjects. It is true that the transcript of the testimony of two witnesses at the Albany hearings established that, in addition to testifying about Communist infiltration into labor unions in the Albany area,

[11] We disregard the evidence indicating that the subject under inquiry was Communist activities in the Chicago area.

they had been willingly led into some testimony about Communist activities by the petitioner and others at Cornell. But that excursion can hardly justify a disregard of the Government's careful proof at the petitioner's trial of what the subject under inquiry actually was. The pertinence of the interrogation of those two witnesses is not before us. The pertinence of the petitioner's interrogation is.

In enacting 2 U. S. C. § 192, the Congress invoked the aid of the federal judicial system to protect itself from contumacious conduct. *Watkins, supra,* at 207. "In fulfillment of their obligation under this statute, the courts must accord to the defendants every right which is guaranteed to defendants in all other criminal cases." *Id.*, at 208. "One of the rightful boasts of Western civilization is that the [prosecution] has the burden of establishing guilt solely on the basis of evidence produced in court and under circumstances assuring an accused all the safeguards of a fair procedure." *Irvin* v. *Dowd*, — U. S. —, — (concurring opinion). Among these is the presumption of the defendant's innocence. *Sinclair* v. *United States*, 279 U. S., at 296–297; *Flaxer* v. *United States*, 358 U. S., at 151. It was incumbent upon the prosecution in this case to prove that the petitioner had committed the offense for which he was indicted. One element of that offense was the pertinence to the subject matter under inquiry of the questions the petitioner refused to answer.[12] We hold, as a matter of law, that there was a failure of such proof in this case. *Sacher* v. *United States*, 356 U. S. 576; see *Sinclair* v. *United States*, 279 U. S., at 298–299; *Braden* v. *United States*, 365 U. S., at 436–437.

We do not decide today any question respecting the power or legislative purpose of this subcommittee of the

[12] This was hardly a matter within the peculiar knowledge of the petitioner. Cf. *McPhaul* v. *United States*, 364 U. S. 372, 379.

House Un-American Activities Committee. Nor do we reach the large issues stirred by the petitioner's First Amendment claims. Our decision is made within the conventional framework of the federal criminal law, and in accord with its traditional concepts. In a word, we hold only that the Government failed to prove its case.[13]

Reversed.

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[13] For a Court opinion specifically to join issue with what is written in dissent is a practice ordinarily to be avoided. One of the dissenting opinions in this case, however, is largely based upon what are asserted to be "the undisputed relevant facts in the record." Since every litigant is entitled to have his case reviewed on the facts in the record, it is appropriate to state explicitly that:

(1) The record affirmatively shows that neither Marqusee nor Richardson testified, directly or indirectly, to "passing out handbills at strike scenes" or to any "plan of using the prestige and innocent aid of the university's placement service in getting summer jobs with labor unions in upper New York," or anywhere else.

(2) The record affirmatively shows that at no time did the subcommittee, or anyone on its behalf, "advise" the petitioner, or anyone else, that the subcommittee was investigating the infiltration of communism into the "educational and labor fields."

SUPREME COURT OF THE UNITED STATES

No. 233.—October Term, 1960.

Bernhard Deutch, Petitioner, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June 12, 1961.]

Mr. Justice Harlan, whom Mr. Justice Frankfurter joins, dissenting.

There is, of course, no doubt that a showing of "pertinency" is an essential part of the Government's burden in a prosecution under 2 U. S. C. § 192. But the nature of this burden may differ, dependent upon what transpired at the Congressional inquiry giving rise to the prosecution.

In a case where the prosecution involves the defendant's refusal to answer a question whose pertinency was explained to him by the Congressional Committee before which he appeared as a witness—following his appropriate objection that the question was not pertinent to the matter "under inquiry," see *Barenblatt* v. *United States*, 360 U. S. 109, 123–124—the Government must stand or fall upon that explanation. For it would be obviously unfair to allow the Government at trial to prove pertinency on a different theory than was given to the defendant at the time he testified, and on the basis of which he presumably determined that he need not answer the question put.

Where, however, the defendant made no "pertinency" objection as a witness before the Congressional Committee, the Government at trial is left free to satisfy the requirement of pertinency in any way it may choose. The present case is such a one, for, as the Court's opinion

recognizes, the petitioner here made no adequate pertinency objection before the House Un-American Activities Subcommittee.

I dissent because in my opinion the Court's holding that the Government failed to establish "pertinency" rests on a too niggardly view of both the issue and the record. Pertinency, which in the context of an investigatory proceeding is of course a term of wider import than "relevancy" in the context of a trial, is to be judged not in terms of the immediate probative significance of a particular question to the matter under authorized inquiry, but in light of its tendency to elicit information which might be a useful link in the investigatory chain. See *Carroll* v. *United States*, 16 F. 2d 951, 953. An investigation must proceed "step by step." *Ibid.*

Pertinency is found lacking here because (1) inquiry as to affairs relating to petitioner's student days at Cornell University, situated at Ithaca, N. Y., it is said, was not germane to the Subcommitte's investigation as to Communist activities in "the Albany area;" and (2) in any event, such investigation, the Court finds, related only to alleged Communist infiltration into labor unions and not as well to infiltration "at Cornell or in educational institutions generally." I can agree with neither facet of this holding.

It is quite true, as the Court says, that Ithaca is some 165 miles away from Albany, but it seems to me much too refined to say, as a matter of law, that the trial court could not reasonably determine that Ithaca was within the Subcommittee's terms of reference. Indeed, I think it fair to suggest that in common usage, at least among New Yorkers, "Albany area" would be regarded as aptly descriptive of "upstate" New York. In relation to "pertinency" the matter should not be judged as if it were one of technical jurisdiction or venue.

The other aspect of the Court's holding seems to me equally infirm. Accepting, as I shall, the Court's view that the trial record shows that the Subcommittee, at the relevant time, was investigating only alleged Communist "labor union," and not "educational," infiltration, it seems to me abundantly clear that the lower courts were justified in concluding that all of the questions with respect to which the petitioner was convicted * were pertinent to that matter.

Only shortly before it examined petitioner, the Subcommittee had interrogated two witnesses, Marqusee and Richardson, with respect to their Communist affiliations, their summer work with two labor unions in Schenectady and in Syracuse, and Communist infiltration into such unions, all while they were both students at Cornell. One of these witnesses, Richardson, had testified that during this period he had known the petitioner, and one Homer Owen (Count Four of the indictment), as Communists on the Cornell campus. I do not see why it should now be deemed either that the Subcommittee's interest in petitioner's testimony was confined to "educational infiltration," or that its preliminary questioning of him might not have led to developing information bearing on "labor union infiltration," possibly stemming from student Communist activity on the Cornell campus, had further inquiry not been blocked by petitioner's refusal to answer.

I cannot agree that the decision of this case has been made "within the conventional framework of the federal criminal law." For surely in judging the pertinency of a question put in the course of an otherwise valid Congressional inquiry, as this one is recognized to have been,

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* Counts One, Two, Four, and Five of the indictment, set forth in Note 5 of the Court's opinion. *Ante*, p. —.

we should not insist that the inquiring committee follow stricter rules than the courts themselves apply in determining, for example, the sufficiency of a plea of self-incrimination under the "link in the chain" rule, see, *e. g.*, *Blau* v. *United States*, 340 U. S. 159, or in judging "materiality" in a perjury case, see *e. g.*, *Carroll* v. *United States*, *supra*. In reversing this conviction, I think the Court has strayed from the even course of decision.

I would affirm.

SUPREME COURT OF THE UNITED STATES

No. 233.—October Term, 1960.

Bernhard Deutch, Petitioner, v. United States.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June 12, 1961.]

Mr. Justice Whittaker, whom Mr. Justice Clark joins, dissenting.

I must say, with all respect, that I think the Court has grossly misread this record. For, after studying and analyzing it, it seems entirely clear to me that not only did petitioner fail to complain of any uncertainty about the subject under inquiry, or object that the questions put to him were not pertinent to the inquiry, but, moreover, at least three of the questions he refused to answer were, on their face, clearly pertinent to the inquiry as a matter of law. Demonstration of these facts can be made only by carefully setting forth in detail the undisputed relevant facts in the record. I now turn to that task.

Acting under the statutory command of Congress to investigate and report to it on the extent, character and objects of "un-American propaganda activities," the "diffusion . . . of subversive . . . propaganda," and "all other questions in relation thereto that would aid Congress in any necessary remedial legislation," [1] a Subcommittee of the House Committee on Un-American Activities conducted investigatory hearings at Albany, New York, on April 7, 8 and 9, 1954, relative to Communist subversive activities. At those hearings evidence was adduced, principally by the testimony of a former grad-

[1] Public Law 601, 79th Cong., 2d Sess. (60 Stat. 828). Rule XI (A)(2), Rules of the House of Representatives. H. Res. 5, 83d Cong., 1st Sess., 99 Cong. Rec. 15. And see pp. 18, 24.

uate student of the School of Industrial and Labor Relations of Cornell University, one Marqusee, and by one Richardson, a former student in the Cornell Law School, that a Communist cell existed in that University from 1947 through 1953. Those witnesses testified that they were members of that cell, and, in addition to holding frequent secret meetings and occasionally passing out hand bills at strike scenes, the members of the cell formulated and carried out a plan of using the prestige and innocent aid of the university's placement service in getting summer jobs with labor unions in upper New York— particularly, Ithaca, Schenectady and Syracuse—where, by fellow Communists, they were put in contact with the leaders of Communist cells in the unions and there further carried on their Communist activities. Richardson—who was in fact an employee of, and regularly reported to, the Federal Bureau of Investigation—testified that there were at least six members of the Cornell cell and that one of the most active members of it was petitioner, Deutch, and that another was one Homer Owen. Richardson further testified that, in 1952 and 1953, Deutch was the liaison between an undisclosed member of the Cornell faculty and that cell; that, in that period, Deutch collected for and turned over to the cell various contributions, including one for $100 but declined to name the donor.

Having this and other similar information, the Subcommittee determined to interrogate Deutch, and, locating him in the graduate school of the University of Pennsylvania in Philadelphia, it caused him to be subpoenaed to appear before the Subcommittee at Albany on Friday, April 9, 1954. But, at the request of petitioner's counsel, and for petitioner's convenience, the Subcommittee agreed to take petitioner's testimony in executive session at Washington, D. C., on Monday, April 12, instead of at Albany on Friday, April 9.

At the appointed time, petitioner, accompanied by his counsel appeared before the Subcommittee in Washington and was sworn and interrogated. After asking and obtaining his name, place and date of birth, and his educational background, the committee advised petitioner that the particular aspect of Communist infiltration into the educational and labor fields to be inquired into in his interrogation was the existence and nature of ". . . a Communist Party group or cell operating among undergraduates . . . [and] . . . graduates at Corn . . . ." Specifically, counsel for the committee stated:

> "Mr. Deutch, during hearings at Albany last week, the committee heard testimony regarding the existence of a Communist Party group or cell operating among undergraduates at Cornell University, among certain graduates at Cornell and in the city of Ithaca.
>
> "In connection with that testimony, the committee was informed that you were a member of one or more of those groups. If so, I would like to ask you [about] certain matters relating to your activity there."

The subject under inquiry, so stated, would appear to have been thus made quite plain. It appears to have been entirely plain to petitioner and his counsel, as neither of them then, or at any time during the hearing, manifested any want of understanding of the subject or asked for any further explanation of it.

Thereupon the following immediately occurred:

> "[Mr. Tavenner—counsel for the Committee]: Were you a member of the Communist Party at Cornell?
>
> "Mr. Deutch: I will answer that question, but only under protest
>
> "I wish to register a challenge as to the jurisdiction of this committee under Public Law 601, which is

the committee's enabling legislation. This question, or any similar question involving my associations, past or future, I am answering, but only under protest as to its constitutionality. But, under your jurisdiction as stated, I answer yes, I was a member of the Communist Party.

"Mr. Tavenner: The committee was advised that a witness by the name of Ross Richardson has stated that you acted as liaison between a Communist Party group on the campus and a member of the faculty at Cornell, and that you knew the name of the member of that faculty, who was a member of the Communist Party.

"Will you tell us who that member of the faculty was?

"Mr. Deutch: Sir, I am perfectly willing to tell you about my own activities, but do you feel I should trade my moral scruples by informing on someone else?

. . . . . .

"Mr. Jackson (the acting chairman of the Subcommittee): That is entirely beside the point. You have been asked a question and we must insist that you answer the question or decline to answer it, and your declination must consist of something more than your moral scruples.

"Mr. Deutch: As to details of that, I think the whole question has been magnified more than it should have.

"Mr. Jackson: There is a question pending and the Chair must insist that you answer the question that has been asked.

"Mr. Deutch: I can only say that whereas I do not want to be in contempt of the committee, I do not believe I can answer questions about other people, but only about myself.

"Mr. Jackson: You therefore refuse to answer the question that is pending, is that correct?

"Mr. Deutch: Yes, sir, . . ."

Petitioner's refusal to answer that question resulted in Count One of his subsequent indictment.

A colloquy then ensued between petitioner and the acting chairman and another member of the Subcommittee and, at the conclusion of which, petitioner stated: "The only thing I am saying, sir, my challenge is, is it constitutional under Public Law 601?"

Thereupon, the following occurred:

"Mr. Tavenner: The committee received testimony from Ross Richardson to the effect that you collected certain donations for the benefit of the Communist Party, and that on one occasion you delivered to him the sum of $100, without designating to him the source of it. Will you tell the committee, please, the source of that $100 contribution, if it was made?

"Mr. Deutch: No; this contribution was made—I believe I gave you the reason why I decline to answer regarding names, and this was from a personal friend."

In reply to the acting chairman's direction to answer the question, petitioner stated:

"Mr. Deutch: I feel like I can't answer that question. I realize there are many problems facing me, and it wasn't an easy decision to make.

"Mr. Jackson: The Chair directs again that you answer.

"Mr. Deutch: I am unable to.

"Mr. Tavenner: . . . I want to know if you refuse to answer the question.

"Mr. Deutch: Yes, sir."

Petitioner's refusal to answer that question resulted in Count Two of his subsequent indictment.

The background of the question, and the question, that resulted in Count Three of the indictment are omitted, because the District Court dismissed that Count, and it is not before us.

Petitioner then refused, though directed by the acting chairman, to answer the question: "Were you acquainted with Homer Owen?" And that refusal resulted in Count Four of his subsequent indictment.

Then, after saying ". . . so when I came to college I was approached and joined [the Communist Party]," petitioner was asked and answered as follows:

> "Mr. Tavenner: By whom were you approached?
>
> "Mr. Deutch: I was approached by a student. I don't wish to give his name.
>
> "Mr. Jackson: The witness is directed to give the name of the person by whom he was approached.
>
> "Mr. Deutch: I decline to give the name."

Petitioner's refusal to answer that question resulted in Count Five of his indictment.

This, I submit, is a fair statement of the undisputed relevant facts, and it sets forth literally every contention, objection and reason given by petitioner at the hearing for his refusal to answer these questions. Apart from the formal testimony of Mr. Tavenner and some documentary exhibits offered by the Government, this was the evidence that was offered and received at petitioner's contempt trial in the District Court.

I think this record provides an ample basis to support the District Court's finding that, in general, "the Committee was investigating the infiltration of Communism into educational and labor fields," 147 F. Supp., at 91, but whether or not that was the general and announced subject of the hearings is immaterial to this case, because

here petitioner was told, near the beginning of his interrogation and before the relevant questions were propounded, that the subject about which the committee wished to interrogate him was "the existence of a Communist Party group or cell operating among [students] at Cornell University . . . [and] matters relating to [his] activity there." Like the Court of Appeals, I think these "quoted statements made to [petitioner] by the committee counsel and a committee member clearly indicated the object of the inquiry" of petitioner—*i.e.*, the nature and extent of Communist infiltration at Cornell—"and the pertinency of the questions [to that subject]." 280 F. 2d, at 696.

Likewise, it seems entirely clear to me, as it did to the Court of Appeals, that not only did petitioner fail to object to any question on the ground of pertinency but "Never once did he indicate unawareness of the purpose of the hearing, or doubt as to the pertinency of the questions." 280 F. 2d, at 694. It also seems plain to me, as it did to the Court of Appeals, that petitioner "declined to answer the questions, not on the ground of pertinency [but rather on the ground] that it was against his 'moral' scruples' to answer questions about other people." 280 F. 2d, at 695. "Nor," as said by the Court of Appeals, "did he claim that he did not understand how the questions related to the subject under inquiry, or what that subject was. On the contrary, it is quite obvious that he recognized that the questions were pertinent to the subject under inquiry, and he based his refusal to answer solely and simply on the fact that he did not wish to give the names of other persons . . . [and] [n]ot until the trial in the District Court, in what appears to be an afterthought, did appellant raise the questions of pertinency and unawareness of the subject matter under inquiry." 280 F. 2d, at 695–696. It thus seems clear to me, as it did to the Court of Appeals, that "the Government has

proved beyond a reasonable doubt that the subject under inquiry and the pertinency of the questions were made to appear at the committee hearing with 'undisputable clarity.'" 280 F. 2d, at 695.

Yet this Court now reverses the findings and judgments of the two courts below upon the sole ground "that the Government at the trial failed to carry its burden of proving the pertinency of the questions." I am compelled by the evidence, respectfully, to disagree.

Here, whether or not petitioner was told or knew that the general subject of the inquiry was "infiltration of Communism into educational and labor fields," he was specifically told that the committee had information that he had recently been a member of a Communist cell at Cornell, had acted as the liaison between an undisclosed member of the faculty and that cell, had collected and turned over to the cell monies from donors whom he refused to identify; and, then, coming specifically to the particular subject about which the committee desired to interrogate him, petitioner was told that the committee wished to interrogate him about "a Communist Party group or cell operating among undergraduates . . . [and] . . . graduates at Cornell and in the city of Ithaca" and "matters relating to [his] activity there." In the second place, the subject under inquiry, thus stated, was not only crystal clear but appears to have been entirely plain to petitioner and his counsel, as neither of them then, or at any time during the hearing, manifested any want of understanding of the subject or asked for any further explanation of it. In the third place, neither petitioner nor his counsel made any objection, or even hinted any objection, to any question put to petitioner at the hearing on the ground of pertinency. Instead, petitioner said: "The only thing I am saying, sir, my challenge is, is it constitutional under Public Law 601?" And, finally, at the trial the Government proved up this specific com-

mittee purpose by introducing into evidence not only the record made at the hearing but also the testimony of the Committee's counsel as to these matters. It is, therefore, passing strange that the Court is unable to find any proof of pertinency of the questions.

In *Watkins* v. *United States*, 354 U. S. 178, the witness had expressly "objected to the questions on the grounds of lack of pertinency" (*id.*, at 214), and the committee failed to clarify that matter. Hence, we said: "Unless the subject matter has been made to appear with undisputed clarity, it is the duty of the investigative body, *upon objection of the witness on grounds of pertinency*, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto." *Id.*, at 214–215. (Emphasis added.) Here, as stated, not only was pertinency made to appear with "undisputable clarity," but moreover petitioner and his counsel gave every indication to the committee that they were aware of the subject under inquiry and made no objection whatever on the ground of pertinency.

In *Barenblatt* v. *United States*, 360 U. S. 109, the witness had said at the hearing, "I might wish to . . . challenge the pertinency of the question to the investigation," and at another point, in a lengthy written statement, he quoted from this Court's opinion in *Jones v. Securities & Exchange Comm'n*, 298 U. S. 1, language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency, and then contended in this Court that his conviction for contempt of Congress should be reversed because the subject of the inquiry and the relevancy of the questions thereto were not made clear. In rejecting that claim, and in contrasting that situation from the one existing in the *Watkins* case, we said: "These statements cannot, however, be accepted as the equivalent of a pertinency objection. At best they constituted but a contemplated objection to

questions still unasked, and buried as they were in the context of petitioner's general challenge to the power of the Subcommittee they can hardly be considered adequate, within the meaning of what we said in *Watkins, supra,* at 214–215, to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection." 360 U. S., at 123–124.

I also think that this Court's decision in *United States* v. *Bryan*, 339 U. S. 323, is highly relevant to this question. For it is as true here as it was there, that if petitioner did not understand the subject under inquiry or believed that the questions put to him were not relevant to that subject, "a decent respect for the House of Representatives, by whose authority [he was being questioned], would have required that [he] state [his] reasons for [refusing answers to the questions]." *Id.*, at 332. Such an objection would have given the Subcommittee an opportunity to avoid the blocking of its inquiry by a further and even more detailed explanation of the subject under inquiry and the manner in which the propounded questions were pertinent thereto. "To deny the Committee the opportunity to consider [such an] objection or remedy it is in itself a contempt of its authority and an obstruction of its processes. See *Bevan* v. *Kreiger*, 289 U. S. 459, 464–465 (1933)." 339 U. S., at 333. Petitioner's failure to make any such objection at the hearing, but raising it, for the first time, at his contempt trial, was patently an attempted "evasion of the duty of one summoned . . . before a congressional committee[, and] cannot be condoned." *Id.*, at 333. And see *McPhaul* v. *United States*, 364 U. S. 372, 379.

This alone should be, and is for me, a complete answer to petitioner's claim, and to the Court's holding, "that the Government at the trial failed to carry its burden of proving the pertinency of the questions."

But, in addition, at least the questions involved in Counts One, Two and Five of the indictment were, on their face, clearly pertinent to the inquiry as a matter of law.[2] Petitioner had been specifically told that the particular subject upon which he was to be interrogated was "the existence of a Communist Party group or cell operating among undergraduates . . . [and] . . . graduates at Cornell and in the city of Ithaca," and "matters relating to [his] activity there." Surely the questions involved in Counts One, Two and Five of the Indictment were, on their face, clearly pertinent to that subject. One cannot profitably elaborate a truth so plain. *Barrenblatt* v. *United States*, 360 U. S. 109, 123–125. And see *McPhaul* v. *United States*, 364 U. S. 372, 380–381.

For these reasons, I am bound to think that the two courts below were right, and that the judgment should be affirmed.

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[2] Inasmuch as a general sentence was imposed on the four counts of no more than the law allows to be imposed on any one count, it follows that if any one of the four counts was adequately proved by the Government the judgment must be affirmed. *Barenblatt* v. *United States*, *supra*, at 126, note 25.